

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
ELKINS

RICHARD WINNING,

Plaintiff,

v.

**CIVIL ACTION NO. 2:11-CV-60
(BAILEY)**

**H.C.C. MEDICAL UNIT STAFF,
TRISTAN TENNY, and
DR. DAVID PROCTOR,**

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge David J. Joel [Doc. 16]. By Standing Order, entered on March 24, 2000, this action was referred to Magistrate Judge Joel for submission of a proposed report and recommendation ("R&R"). Upon his initial review, Magistrate Judge Joel filed his R&R on March 7, 2012. In that filing, the magistrate judge recommends that this Court dismiss with prejudice Winning's § 1983 Complaint [Doc. 1] pursuant to 28 U.S.C. §§ 1915A and 1915(e) for failure to state a claim upon which relief can be granted.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or

recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Joel's R&R were due by March 26, 2012. To date, no objections have been filed. Accordingly, this Court will review the R&R for clear error.

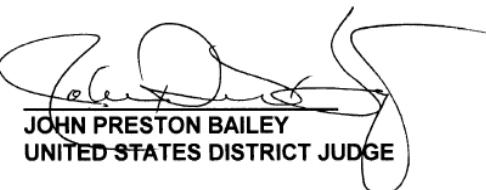
Upon careful review of the record, it is the opinion of this Court that the magistrate judge's Report and Recommendation [Doc. 16] should be, and is, hereby **ORDERED** **ADOPTED** for the reasons more fully stated therein. Accordingly, Winning's § 1983 Complaint [Doc. 1] is hereby **DISMISSED WITH PREJUDICE**. This Court **DIRECTS** the Clerk to enter judgment in favor of the defendants and strike this case from the active docket of this Court.

As a final matter, upon an independent review of the record, this Court hereby **DENIES** a certificate of appealability, finding that Winning has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record and to mail a copy to the *pro se* plaintiff.

DATED: April 2, 2012.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE